

Introduced by Senator McGuire
(Coauthor: Senator Wolk)
(Coauthors: Assembly Members Levine and Wood)

February 18, 2016

An act to amend Section 6586.7 of, and to add Section 6588.8 to, the Government Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 1233, as introduced, McGuire. Joint powers authorities: Water Bill Savings Act.

Existing law, the Marks-Roos Local Bond Pooling Act of 1985, authorizes joint powers authorities, among other powers, to issue bonds and loan the proceeds to local agencies to finance specified types of projects and programs.

This bill would enact the Water Bill Savings Act, which would authorize a joint powers authority to provide funding for a customer of a local agency or its publicly owned utility to acquire, install, or repair a water efficiency improvement on the customer's property served by the local agency or its publicly owned utility. The bill would require the customer to repay the authority through an efficiency charge on the customer's water bill to be imposed and collected by the local agency or its publicly owned utility on behalf of the authority pursuant to a servicing agreement. The bill would authorize the authority to issue bonds to fund the program.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) Water conservation efforts are indispensable to combating
4 the current and continuing drought conditions faced by the state
5 and advancing the state's greenhouse gas emission reduction goals.

6 (b) The up-front cost of acquiring, installing, and repairing water
7 efficiency improvements is often prohibitive and may prevent
8 customers from using them on residential, commercial, industrial,
9 agricultural, or other real property.

10 (c) Increasing customer water efficiency is a core component
11 of the provision of water utility service.

12 SEC. 2. (a) It is the intent of the Legislature to make water
13 efficiency improvements more affordable and promote the
14 acquisition, installation, and repair of those improvements by
15 allowing local agencies to establish a mechanism by which they
16 may help their water customers to acquire, install, and repair water
17 efficiency improvements on privately owned customer properties.

18 (b) It is the intent of the Legislature that this act authorize the
19 development of a program to be established by a joint powers
20 authority that would provide a water customer with an alternative
21 and voluntary means to acquire, install, or repair water efficiency
22 improvements. It is further the intent of the Legislature that the
23 cost of this voluntarily acquired, installed, or repaired water
24 efficiency improvement be repaid through an efficiency charge
25 added to the water bill associated with the customer property upon
26 which the water efficiency improvement is located.

27 SEC. 3. Section 6586.7 of the Government Code, as added by
28 Section 4 of Chapter 723 of the Statutes of 2000, is amended to
29 read:

30 6586.7. (a) A copy of the resolution adopted by an authority
31 authorizing bonds or any issuance of bonds, or accepting the benefit
32 of any bonds or proceeds of bonds, except bonds issued or
33 authorized pursuant to Article 1 (commencing with Section 6500),
34 or bonds issued for the purposes specified in subdivision (c) of
35 Section 6586.5, shall be sent by certified mail to the Attorney
36 General and the California Debt and Investment Advisory
37 Commission not later than five days after adoption by the authority.

38 (b) This section does not apply to bonds:

1 (1) Specified in subdivision (c) of Section 6586.5.

2 (2) Issued pursuant to the Community Redevelopment Law,
3 Part 1 (commencing with Section 33000) of Division 24 of the
4 Health and Safety Code.

5 (3) To finance transportation facilities and vehicles.

6 (4) To finance a facility that is located within the boundaries of
7 an authority, provided that the authority that issues those bonds
8 consists of any of the following:

9 (A) Local agencies with overlapping boundaries.

10 (B) A county and a local agency or local agencies located
11 entirely within that county.

12 (C) A city and a local agency or local agencies located entirely
13 within that city.

14 (5) To finance a facility for which an authority has received an
15 allocation from the California Debt Limit Allocation Committee.

16 (6) Of an authority that consists of no less than 250 local
17 agencies and the agreement that established that authority requires
18 the governing body of the local agency that is a member of the
19 authority in whose jurisdiction the facility will be located to
20 approve the facility and the issuance of the bonds.

21 (7) *Issued pursuant to Section 6588.8.*

22 SEC. 4. Section 6588.8 is added to the Government Code, to
23 read:

24 6588.8. (a) This section shall be known and may be cited as
25 the Water Bill Savings Act.

26 (b) For purposes of this section, the following terms have the
27 following meanings:

28 (1) “Customer” means a person or entity that purchases water
29 from a local agency or its publicly owned utility and is billed for
30 the water by the local agency or its publicly owned utility.

31 (2) “Customer property” means residential, commercial,
32 industrial, agricultural, or other real property owned by the
33 customer.

34 (3) “Efficiency charge” means a charge on a customer’s water
35 bill that is paid by the customer directly to the local agency or its
36 publicly owned utility in order to pay for an efficiency
37 improvement pursuant to this section.

38 (4) “Efficiency improvement” means a water efficiency
39 improvement, as defined by the authority.

40 (5) “Financing costs” mean all of the following:

1 (A) An interest and redemption premium payable on a bond.

2 (B) The cost of retiring the principal of a bond, whether at
3 maturity, including acceleration of maturity upon an event of
4 default, or upon redemption, including sinking fund redemption.

5 (C) A cost related to issuing or servicing bonds, including, but
6 not limited to, a servicing fee, trustee fee, legal fee, administrative
7 fee, bond counsel fee, bond placement or underwriting fee,
8 remarketing fee, broker dealer fee, independent manager fee,
9 municipal adviser fee, accounting report fee, engineering report
10 fee, rating agency fee, and payment made under an interest rate
11 swap agreement.

12 (D) A payment or expense associated with a bond insurance
13 policy, financial guaranty, or a contract, agreement, or other credit
14 enhancement for bonds or a contract, agreement, or other financial
15 agreement entered into in connection with a bond.

16 (E) The funding of one or more reserve accounts related to a
17 bond.

18 (6) “Local agency” means a “local government” as defined in
19 subdivision (b) of Section 1 of Article XIII C of the California
20 Constitution.

21 (7) “Publicly owned utility” means a utility furnishing water
22 service to customers that is owned and operated by a local agency
23 or a department or other subdivision of a local agency and includes
24 any successor to the powers and functions of the department or
25 other subdivision.

26 (8) “Servicing agreement” means an agreement between a local
27 agency or its publicly owned utility and the authority for the
28 collection of the efficiency charge, pursuant to which the local
29 agency or its publicly owned utility acts as a servicing agent for
30 purposes of collecting the efficiency charge for the authority.

31 (c) (1) Notwithstanding any other law, if the requirements of
32 paragraphs (2) and (3) are met, an authority may provide funding
33 for a customer of a local agency or its publicly owned utility to
34 acquire, install, or repair an efficiency improvement on a customer
35 property served by the local agency or its publicly owned utility.

36 (2) (A) The authority, by resolution, establishes or extends a
37 program to provide funding for a customer of a local agency or its
38 publicly owned utility to acquire, install, or repair an efficiency
39 improvement on a customer property served by the local agency

1 or its publicly owned utility. The resolution shall do all of the
2 following:

3 (i) Identify the geographic area in the state in which the authority
4 intends to operate the program.

5 (ii) Approve a standardized servicing agreement.

6 (iii) Authorize one or more designated officials of the authority
7 to execute and deliver the servicing agreement on behalf of the
8 authority.

9 (B) The authority acknowledges receipt of the resolution
10 described in paragraph (3).

11 (C) The authority may determine that all proceedings were valid
12 and in conformity with the requirements of this paragraph and that
13 finding shall be final and conclusive.

14 (3) The legislative body of the local agency requests the
15 authority to provide funding for its customers through a program
16 established by the authority pursuant to this section by doing all
17 of the following:

18 (A) The legislative body adopts a resolution declaring its
19 intention to request the authority to establish or extend a program
20 to a customer represented by the legislative body, calling for a
21 public hearing that shall be held at least 30 days later and directing
22 the clerk or secretary of the legislative body to publish a notice of
23 the hearing at least five days before the hearing in a newspaper of
24 general circulation in the boundaries of the local agency. If the
25 local agency wishes to pledge its water enterprise revenue as
26 security for the payment of the principal of, and interest and
27 redemption premium on, bonds issued by the authority in the event
28 that efficiency charges are insufficient for those purposes pursuant
29 to paragraph (4) of subdivision (f), the legislative body shall declare
30 that intention in the resolution.

31 (B) The legislative body conducts the noticed public hearing
32 and, after considering the testimony of any interested person,
33 concludes that the program and the proposed pledge of water
34 enterprise revenue, if applicable, would provide significant public
35 benefits in accordance with the criteria specified in Section 6586.

36 (C) The legislative body adopts a resolution that does all of the
37 following:

38 (i) Authorizes the authority to establish or extend a program
39 pursuant to this section within the boundaries of the local agency.

1 (ii) Declares that the operation of the program by the authority
2 in the local agency's geographic boundaries would provide
3 significant public benefits in accordance with the criteria specified
4 in Section 6586.

5 (iii) Approves the standardized servicing agreement and
6 authorizes one or more designated officials of the local agency to
7 execute and deliver the servicing agreement with the authority.

8 (iv) If applicable, approves the pledge of water enterprise
9 revenue as security for the payment of the principal of, and interest
10 and redemption premium on, bonds issued by the authority in the
11 event that efficiency charges are insufficient for those purposes.

12 (v) If applicable, authorizes execution and delivery of one or
13 more pledge agreements to evidence a pledge.

14 (vi) In the resolution, the legislative body may determine that
15 all proceedings were valid and in conformity with the requirements
16 of this section and that finding shall be final and conclusive.

17 (d) (1) Subject to the requirements of Article XIII C or Article
18 XIII D of the California Constitution, a customer shall repay the
19 authority through an efficiency charge on the customer's water
20 bill that is imposed and collected by the local agency or its publicly
21 owned utility. The imposition of the efficiency charge shall be
22 made and evidenced by a written agreement between the customer,
23 the authority, and the local agency or its publicly owned utility.
24 The use of the proceeds of the efficiency charge to repay the costs
25 of the efficiency improvement constitutes a "water" service, as
26 defined in subdivision (m) of Section 53750.

27 (2) The written agreement shall include all of the following:

28 (A) An agreement by the customer to pay an efficiency charge
29 for the period and in the amount specified in the agreement unless
30 the efficiency charge is prepaid in the manner set forth in the
31 agreement. The period designated for repayment shall not exceed
32 the estimated useful life of the funded efficiency improvements.

33 (B) A description of the financial calculation, formula, or other
34 method that the authority used to determine the efficiency charge.
35 The efficiency charge may include a component for reasonable
36 administrative expenses incurred by the local agency or its publicly
37 owned utility and the authority in connection with the program
38 and the funding.

39 (C) A description of the efficiency improvement funded with
40 the efficiency charge. A determination in the agreement that an

1 improvement is an efficiency improvement shall be final and
2 conclusive.

3 (D) A representation by the customer that the customer intends
4 to acquire, install, or repair and use the efficiency improvement
5 on the customer's property for the useful life of the efficiency
6 improvement. Any failure by the customer to acquire, install, or
7 repair and use the efficiency improvement on the customer's
8 property for the useful life of the efficiency improvement shall not
9 affect the customer's obligation to pay the efficiency charge as set
10 forth in the agreement.

11 (3) Notwithstanding any other provision of this section, an
12 efficiency charge shall not exceed the maximum rate permitted
13 under Article XIII D of the California Constitution.

14 (4) The timely and complete payment of an efficiency charge
15 by a customer that has agreed to pay an efficiency charge may be
16 a condition of receiving water service from the local agency or its
17 publicly owned utility, and a local agency and its publicly owned
18 utility are authorized to use their established collection policies
19 and all rights and remedies provided by law to enforce payment
20 and collection of the efficiency charge. A person liable for an
21 efficiency charge shall not be entitled or authorized to withhold
22 payment, in whole or in part, of the efficiency charge for any
23 reason.

24 (5) A customer's obligation to pay the efficiency charge shall
25 run with title to the customer property on which the efficiency
26 improvement is located until repaid in full. A local agency or its
27 publicly owned utility may record notice of an efficiency charge
28 in the records of the county recorder of the county in which the
29 customer's property is located and that notice shall impart notice
30 of the efficiency charge to all persons. Any failure by the local
31 agency or its publicly owned utility to record that notice shall not
32 excuse an owner of the customer property, on which the funded
33 improvement is located, from the obligation to pay the efficiency
34 charge.

35 (6) Because the efficiency charge is a voluntary charge that will
36 be made pursuant to a written agreement between the customer,
37 the authority, and the local agency or its publicly owned utility,
38 the Legislature finds and declares that voluntary efficiency charges
39 under this section are not taxes, assessments, fees, or charges for
40 the purposes of Articles XIII C and XIII D of the California

1 Constitution and therefore the provisions of Articles XIII C and
2 XIII D and Article 4.6 (commencing with Section 53750) of
3 Chapter 4 of Part 1 of Division 2 of Title 5 of the Government
4 Code are not applicable to voluntary efficiency charges levied
5 pursuant to this section. Furthermore, a program established
6 pursuant to this section provides a “water” service, as defined in
7 subdivision (m) of Section 53750.

8 (e) (1) The authority and a local agency or its publicly owned
9 utility shall enter into a servicing agreement for the collection of
10 one or more efficiency charges and the local agency or its publicly
11 owned utility shall act as a servicing agent for purposes of
12 collecting the efficiency charge.

13 (2) Moneys collected as an efficiency charge by the local agency
14 or its publicly owned utility, acting as a servicing agent on behalf
15 of the authority, shall be held in trust for the exclusive benefit of
16 the persons entitled to the financing costs to be paid, directly or
17 indirectly, from the efficiency charge and shall not lose their
18 character as revenues of the authority because the local agency or
19 its publicly owned utility possesses them.

20 (3) In the servicing agreement, the local agency or its publicly
21 owned utility shall contract with the authority that the local agency
22 or its publicly owned utility will continue to operate its publicly
23 owned utility system to provide service to its customers, will, as
24 servicer, collect the efficiency charge for the benefit and account
25 of the authority and, if applicable, the beneficiaries of the pledge
26 of the efficiency charge, and will account for and remit these
27 amounts to, or for the account of, the authority.

28 (4) The servicing agreement shall provide that the obligation to
29 pay the efficiency charge shall run with title to the customer
30 property on which the efficiency improvement is located until the
31 authority is fully repaid. When the property is not owner occupied,
32 the servicing agreement shall provide that the obligation to pay
33 the efficiency charge appear in the terms through which the
34 customer leases or licenses the property for occupancy.

35 (5) In the servicing agreement, the local agency or its publicly
36 owned utility may agree that the timely and complete payment of
37 all efficiency charges by a customer that has agreed to pay an
38 efficiency charge shall be a condition of receiving service from
39 the publicly owned utility, and the local agency or its publicly
40 owned utility shall use their established collection policies and all

1 rights and remedies provided by law to enforce payment and
2 collection of the efficiency charge.

3 (6) In the servicing agreement, the local agency or its publicly
4 owned utility shall agree that in the event of default by the local
5 agency or its publicly owned utility in payment of revenues arising
6 with respect to the efficiency charge, the authority, upon the
7 application by the beneficiaries of the authority's pledge described
8 in this section, and without limiting any other remedies available
9 to the beneficiaries by reason of the default, shall order the
10 sequestration and payment to the beneficiaries of revenues arising
11 with respect to the efficiency charge.

12 (f) (1) The authority may issue one or more bonds for the
13 purpose of providing funds for the acquisition, installation, and
14 repair of an efficiency improvement on customer property pursuant
15 to this section.

16 (2) An authority issuing a bond shall include in its preliminary
17 notice and final report for the bonds submitted to the California
18 Debt and Investment Advisory Commission pursuant to Section
19 8855 a statement that the bond is being issued pursuant to this
20 section.

21 (3) (A) The authority may, pursuant to Section 5451, pledge
22 one or more efficiency charges as security for the bonds issued
23 pursuant to this section. Revenue from an efficiency charge shall
24 be deemed special revenue of the authority and shall not constitute
25 revenue of the local agency or its publicly owned utility for any
26 purpose, including without limitation any dedication, commitment,
27 or pledge of revenue, receipts, or other income that the local agency
28 or its publicly owned utility has made or will make for the security
29 of any of its obligations.

30 (B) The validity and relative priority of a pledge created or
31 authorized under this section is not defeated or adversely affected
32 by the commingling of efficiency charge revenue with other
33 moneys collected by a local agency or its publicly owned utility.

34 (4) Subject to the requirements of Article XIII C or Article XIII
35 D of the California Constitution, a local agency may pledge water
36 enterprise revenue as security for the payment of the principal of,
37 and interest and redemption premium on, bonds issued by the
38 authority in the event that efficiency charges are insufficient for
39 those purposes, and may execute one or more pledge agreements,
40 which shall be made pursuant to Section 5451, for the benefit of

1 the authority or for the exclusive benefit of the persons entitled to
2 the financing costs to be paid from the efficiency charges.

3 (g) If a local agency for which bonds have been issued and
4 remain outstanding ceases to operate a water utility, either directly
5 or through its publicly owned utility, references in this section to
6 the local agency or to its publicly owned utility shall be deemed
7 to refer to the entity providing water utility services in lieu of the
8 local agency and that entity shall assume and perform all
9 obligations of the local agency or its publicly owned utility required
10 by this section and the servicing agreement with the authority while
11 the bonds remains outstanding.

12 (h) If the local agency, its publicly owned utility, and the
13 authority have complied with the procedures set forth in this
14 section, they shall not be required to comply with Section 6586.5.

15 (i) The provisions of this section are severable. If any provision
16 of this section or its application is held invalid, that invalidity shall
17 not affect other provisions or applications that can be given effect
18 without the invalid provision or application.